

Initiative No. 1120

July 6, 2020

BILL REQUEST - CODE REVISER'S OFFICE

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BRIEF DESCRIPTION: **WASHINGTON ANTI-DISCRIMINATION ACT (WADA)**

SUBMITTED TO SECRETARY OF STATE: MONDAY, JULY 27, 2020

Initiative No. 1120

July 6, 2020

AN ACT Relating to prohibiting discrimination in public health and safety, public education, public employment, and public contracting; amending RCW 49.60.010, 49.60.030, 49.60.400, and 43.43.015; reenacting and amending RCW 49.60.040; adding a new section to chapter 41.05 RCW; and creating new sections.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

PART I

TITLE

NEW SECTION. **Sec. 1.** This act may be known and cited as the Washington antidiscrimination act.

PART II

STATE OF EMERGENCY

NEW SECTION. **Sec. 2.** On February 29, 2020, Washington state became the site of the first reported COVID-19 death in the United States. On March 13, 2020, the president of the United States, Donald J. Trump, declared a national emergency due to the global coronavirus pandemic. On March 22, 2020, in response to governor Jay Inslee's written request, President Trump declared a major disaster in Washington due to the coronavirus pandemic.

The unprecedented COVID-19 pandemic combined with the global recession, has unmasked the discriminatory educational, employment, economic, health and safety disparities which have long plagued seniors, women, persons with disabilities, persons of color, members of the LGBTQ+ community, military veterans, and other vulnerable communities in Washington state.

As of July 25, 2020, the department of health reported more than fifty-two thousand confirmed COVID-19 cases and nearly one thousand

five hundred deaths statewide, with people of color sixty-three percent or nearly thirty-three thousand of the COVID-19 cases.

This initiative to the legislature is urgently and immediately needed to prevent discriminatory laws and actions from increasing disparities and deaths during and after this public health emergency.

PART III

FINDINGS

NEW SECTION. **Sec. 3.** (1) The legislature finds that Washington state is one of America's most economically and ethnically diverse states. However, senior citizens, women, persons with disabilities, veterans, members of the LGBTQ+ community, people of color, and other historically marginalized communities have experienced harsh discrimination by federal and state governments which have created disparities in stark contrast to the general population in public health and safety, public education, public employment, and public contracting.

(2) As of July 25, 2020, the Washington state department of health reports that Hispanics and other people of color are sixty-three percent of the racially identifiable confirmed COVID-19 cases, while only thirty-two percent of the state's population. However, due to the department of health's failure to track or report the critical race or ethnicity data of all coronavirus patients, this data does not include the race or ethnicity of thirty-five percent or more than seventeen thousand COVID-19 patients.

(3) According to the National Academy of Sciences' (NAS) *Proceedings of the National Academy of Sciences* (PNAS), African American men and women, American Indian/Alaska Native men and women, and Latino men face a higher lifetime risk of being killed by police than do their white peers. Risk is highest for black men, who (at 2019 levels of risk) face about a 1 in 1,000 chance of being killed by police over the life course. For young men of color, police use of force is among the leading causes of death.

(4) The Donald J. Trump administration killed the Obama administration's racially-transparent admissions policies which promote diversity within all public colleges and universities. This action threatens federal funding for the University of Washington, Washington State University, Western Washington University, Eastern Washington University, and Central Washington University.

(5) The Washington state supreme court ruled in *Parents Involved In Community Schools v. Seattle School District No. 1*, 72 P.3d 151, 166 (Wash. 2003), that preferential treatment means the act of solely using race or gender as factors to elevate a lesser qualified candidate over a more qualified candidate.

(6) According to the Washington state office of minority and women's business enterprises, since the 1998 passage of Tim Donald Eyman's Initiative No. 200, small women and minority owned businesses have been unfairly denied more than \$3.8 billion in job-generating state contracting opportunities.

The Bill and Melinda Gates Foundation has found there are systemic inequities in our society which must be cured for all children to have a fighting chance to reach their full potential, regardless of their race, ethnicity, income, or gender. This initiative finally addresses long ignored systemic racism, sexism and other inequities in Washington state.

PART IV

INTENT

NEW SECTION. **Sec. 4.** (1) The intent of the people in enacting this law is to prohibit discrimination against all Washington state residents in public education, public employment, public contracting, and public health and safety without any quotas or preferential treatment.

(2) This is accomplished by:

(a) Protecting all Washington residents from discrimination by requiring the state to provide all Washingtonians COVID-19 testing, treatment, contact tracing, and forthcoming vaccines at no cost,

without discrimination due to age, gender, sexual orientation, disability, citizenship and immigrant status, race, veteran status, ethnicity, income or employment;

(b) Protecting all Washington residents from police and other law enforcement officers' discriminatory use of deadly force due to their age, gender, sexual orientation, disability, citizenship and immigrant status, race, or veteran status.

(c) Preserving veterans' preferences and international students' opportunities for a college education;

(d) Codifying the meaning of preferential treatment based on the Washington state supreme court's definition in *Parents Involved In Community Schools v. Seattle School District No. 1*, 72 P.3d 151, 166 (Wash. 2003); and

(e) Clarifying that affirmative action is strictly voluntary for all participants.

PART V

PROHIBITING DISCRIMINATION IN VACCINATION AVAILABILITY

NEW SECTION. **Sec. 5.** A new section is added to chapter 41.05 RCW to read as follows:

(1) The state shall not discriminate based on income, county, city, zip code, age, gender, employment, race, ethnicity, physical or mental disability, religion, occupation, sexual orientation, veteran status, homelessness, incarceration, tribal affiliation, celebrity, citizenship or immigrant status when making available testing, tracing, treatment, or forthcoming United States Food and Drug Administration approved vaccines developed to immunize all Washington residents of COVID-19.

(2) The Washington state health care authority shall work in partnership with the Washington state department of health, the Washington state department of social and health services, the office of the insurance commissioner, Washington vaccine association, Washington state human rights commission, Washington state office of equity, and local county and city departments of

health to ensure that every Washington resident or their parent or legal guardian who requests a vaccination shall receive a vaccination at no cost without discrimination based on their income, county, city, zip code, age, gender, disability, race, religion, ethnicity, sexual orientation, occupation, veteran status, celebrity, citizenship, immigrant status, tribal affiliation, homelessness, incarceration, or employment.

(3) The state is authorized to seek federal, state, local, and private funds to underwrite the costs for uninsured patient vaccinations.

(4) For the purposes of this section, "vaccine" means a preparation of killed or attenuated living microorganisms, or fraction thereof, that upon administration stimulates immunity that protects against disease and is approved by the federal food and drug administration as safe and effective and recommended by the advisory committee on immunization practices of the centers for disease control and prevention.

(5) For the purposes of this section, vaccinations shall be strictly voluntary and administered after the patient, their parent, or legal guardian has provided their fully informed written consent. No Washington resident shall be denied safe and effective alternative medical treatment should the resident, their parent, or legal guardian decline a vaccination.

PART VI

PROTECTION FROM LAW ENFORCEMENT'S DISCRIMINATORY USE OF DEADLY FORCE

Sec. 6. RCW 49.60.010 and 2020 c 52 s 1 are each amended to read as follows:

This chapter shall be known as the "law against discrimination." It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its

inhabitants because of race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in education, employment, contracting, health and safety, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

Sec. 7. RCW 49.60.030 and 2020 c 52 s 4 are each amended to read as follows:

(1) The right to be free from discrimination because of race, creed, color, national origin, citizenship or immigration status, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph;

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin, citizenship or immigration status, or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; (~~and~~)

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement; and

(h) The right to be protected from police and other law enforcement officers' or departments' discriminatory use of deadly force, including but not limited to the chokehold, carotid hold, or any other methods of physical restraint which could result in serious bodily injury or death.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person or their estate, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter, or the United States Civil Rights Act of 1871 (42 U.S.C. Sec. 1983), or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

Sec. 8. RCW 49.60.040 and 2020 c 85 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur.

(2) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution.

(3) "Commission" means the Washington state human rights commission.

(4) "Complainant" means the person who files a complaint in a real estate transaction.

(5) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units.

(6) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred.

(7)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

- (i) Is medically cognizable or diagnosable; or
- (ii) Exists as a record or history; or
- (iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect.

(8) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.

(9) "Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(10) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person.

(11) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit.

(12) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer.

(13) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years.

(14) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, to be treated as not welcome, accepted, desired, or solicited.

(15) "Honorably discharged veteran or military status" means a person who is:

(a) A veteran, as defined in RCW 41.04.007; or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

(16) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment.

(17) "Marital status" means the legal status of being married, single, separated, divorced, or widowed.

(18) "National origin" includes "ancestry."

(19) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.

(20) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(21) "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists.

(22) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services.

(23) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

(24) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction.

(25) "Service animal" means any dog or miniature horse, as discussed in RCW 49.60.214, that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other

mental disability. The work or tasks performed by the service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks. This subsection does not apply to RCW 49.60.222 through 49.60.227 with respect to housing accommodations or real estate transactions.

(26) "Sex" means gender.

(27) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

(28) "Chokehold or carotid hold" means a lateral vascular neck restraint which restricts the flow of oxygen or blood to the brain by compressing the windpipe or the carotid arteries on each side of the neck, or sitting, kneeling, or standing on the chest, back or neck in a manner that compresses the diaphragm and hinders breathing or reduces a person's air intake.

(29) "Deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

(30) "Discriminatory" means disparate treatment or bias against a person or group based on their age, gender, sexual orientation, gender identity, disability, citizenship and immigrant status, race, or veteran status; or a repeated practice which results in the disproportionate impact or bias against persons or groups based on their age, gender, sexual orientation, gender identity, disability, citizenship and immigrant status, race, or veteran status as documented by a valid disparity study or proven in a court of law.

PART VII

PROHIBITION OF DISCRIMINATION AND PREFERENTIAL TREATMENT

Sec. 9. RCW 49.60.400 and 2013 c 242 s 7 are each amended to read as follows:

(1) The state shall not discriminate against(~~(, or grant preferential treatment to,)~~) any individual or group on the basis of race, sex, color, ethnicity, ~~((or))~~ national origin, age, income, sexual orientation, citizenship or immigration status, the presence of any sensory, mental, or physical disability, or veteran status in the operation of public employment, public education, ~~((or))~~ public contracting, or public health and safety.

(2) ~~((This section applies only to action taken after December 3, 1998.~~

~~(3))~~ The state shall not grant preferential treatment to any individual or group solely on the basis of either gender or race, in the operation of public health and safety, public employment, public education, or public contracting.

(3) Nothing in this section shall prohibit a veteran, as defined in RCW 41.04.005, 41.04.007, and 73.08.005 and their spouses, widows, or widowers from receiving a veteran preference in public education, public employment, public contracting, or public health

and safety to which they are currently entitled under federal, state, or local law.

(4) This section does not ~~((affect))~~ prohibit any law ~~((or))~~, governmental or affirmative action that does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, ~~((or))~~ national origin, age, income, sexual orientation, credit rating, medical condition, gender identity, citizenship or immigration status, the presence of any sensory, mental, or physical disability, or honorably discharged veteran or legal immigrant status; or does not grant preferential treatment to any individual or group solely on the basis of either gender or race.

~~((4))~~ (5) This section does not affect any otherwise lawful classification that:

(a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or

(b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or

(c) Provides for separate athletic teams for each sex.

~~((5))~~ (6) This section does not invalidate any court order or consent decree that is in force as of December 3, 1998.

~~((6))~~ (7) This section does not prohibit ~~((action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to))~~ the state or any local agency or educational institution which receives federal funding, from implementing hiring, compensation, contracting, or admissions policies consistent with federal statutory law.

~~((7))~~ (8) Nothing in this section prohibits schools established under chapter 28A.715 RCW from:

(a) Implementing a policy of Indian preference in employment; or

(b) Prioritizing the admission of tribal members where capacity of the school's programs or facilities is not as large as demand.

~~((48))~~ (9) Nothing in this section prohibits state colleges and universities from admitting qualified legal immigrants from international nations, states, territories, continents, and countries including, but not limited to Canada, China, Africa, the Caribbean, Europe, India, Mexico, Middle East, and the Pacific Rim.

(10) Nothing in this section prohibits the state from remedying discrimination against, or underrepresentation of, disadvantaged groups as documented in a valid disparity study or proven in a court of law.

(11) Nothing in this section prohibits the state from implementing laws, regulations or rules such as participation goals or outreach efforts that do not utilize quotas and that do not constitute preferential treatment as defined in this section.

(12) For the purposes of this section(~~(,—"state")~~):

(a) "State" includes, but is not necessarily limited to, the state itself, any city, county, public college or university, community college, school district, special district, or other political subdivision or governmental instrumentality of or within the state;

(b) "State agency" means the same as defined in RCW 42.56.010;

(c) "Sexual orientation" means the same as defined in RCW 49.60.040;

(d) "LGBTQ+" includes lesbian, gay, bisexual, transgender, and queer, as defined in RCW 43.114.010, plus (+) nonbinary people;

(e) "Affirmative action" means a federal, state, or local government policy in which multiple adversity factors including but not limited to merit, past discrimination based on age, sex, ethnicity, national origin, race, the presence of any sensory, mental, or physical disability, and veteran status are considered in the selection of qualified women, military veterans, persons in protected age categories, persons with disabilities, and persons of color for opportunities in public education, public employment, and public contracting. Affirmative action includes, but shall not be limited to, recruitment, hiring, training, promotion, outreach,

setting and achieving goals and timetables, and other measures of merit designed to increase Washington's diversity in public education, public employment, public contracting, and public health and safety with the goal of reflecting the rich diversity of the state's population. Affirmative action shall be totally voluntary on the part of any recipient, and it shall not mean any form of quota system; and

(f) "Preferential treatment" means the act of using race or gender as the sole qualifying factor to select a lesser qualified candidate over a more qualified candidate for a public education, public employment, public contracting or public health opportunity.

~~((+9))~~ (13) The remedies available for violations of this section shall be the same, regardless of the injured party's race, ~~((sex))~~ gender, sexual orientation, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law set forth in RCW 49.60.230.

~~((+10))~~ (14) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

(15) This section applies only to post December 3, 1998 actions.

Sec. 10. RCW 43.43.015 and 1985 c 365 s 4 are each amended to read as follows:

For the purposes of this chapter, "affirmative action" means, in addition to and consistent with the definition in RCW 49.60.400, a policy or procedure by which racial minorities, women, persons in the protected age category, ~~((persons))~~ civilians and veterans with disabilities, ~~((Vietnam-era veterans,))~~ and ~~((disabled))~~ veterans as defined in RCW 41.04.005, 41.04.007, or 73.08.005, are provided with increased employment opportunities. ~~((+))~~ Affirmative action shall

be totally voluntary on the part of any recipient, and it shall not mean any ((sort)) form of quota system.

PART VIII IMPLEMENTATION

NEW SECTION. **Sec. 11.** This law is deemed necessary for the immediate preservation of the public peace, health, or safety, support of the state government and its existing public institutions, as demonstrated by petitions signed by the legally required percentage of Washington registered voters.

NEW SECTION. **Sec. 12.** According to Article II, section 1 (c) and (d) of the Washington state Constitution, this initiative shall become effective either:

(1) Ninety days after the adjournment of the session at which it was enacted; or

(2) Thirty days after the election at which it is approved by a majority of Washington state voters voting at that election.

NEW SECTION. **Sec. 13.** Either within ninety days after the adjournment of the session at which this initiative is enacted, or thirty days following the election at which this initiative is approved by a majority of Washington state voters voting at that election, the office of program research and senate committee services shall prepare a joint memorandum and draft legislation to present to the appropriate committees of the legislature regarding any necessary changes to the Revised Code of Washington to bring nomenclature and processes in line with this act so as to fully effectuate and not interfere in any way with its intent. In preparing the memorandum and draft legislation, the office of program research and senate committee services shall consult with the sponsors of this initiative and the appropriate state agencies.

NEW SECTION. **Sec. 14.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 15.** For constitutional purposes, the subject of this act is "Prohibiting discrimination in Washington state."

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